livered a sum of money to defendant, directing him to care for testator till death, then pay his debts, compensate himself for his services, and turn over the remainder to testator's sister. *Held* to be a valid gift *causa mortis* and not assets recoverable by plaintiff, testator's administrator.

The plaintiff contended that this was an attempted testamentary disposition and that defendant was a mere agent. But the court held defendant to be a trustee for testator's sister. As to the right to couple a gift *causa mortis* with a trust without defeating the gift see *Ellis v. Secor,* 31 Mich. 185; *Curtiss v. Sav. Bank,* 77 Me. 15; *Clough v. Clough,* 177 Mass. 85; *Laucks v. Johnson,* 70 Hun. 565; *Hills v. Hills,* 8 M. & W. 401; *Schoul., Pers. Prop.* (2nd ed.) Sec. 195; *Schoul., Wills,* Sec. 271.

ILLEGITIMATE CHILD—TRANSFER OF CUSTODY BY MOTHER—VALIDITY.—CUSSET V. EUVRARD, 52 ATL. 1110 (N. J.).—The putative father of illegitimate children took charge of them on an agreement by which the mother transferred to him all rights to their custody. *Held,* that the transfer was valid as against the mother, and being for the interest of the children, would not be set aside.

Contracts for the surrender of the care and custody of children by parents are contrary to public policy. *Copeland v. State,* 60 Ind. 394; *People v. Mercein,* 3 Hill (N. Y.) 399. A lawful father cannot by agreement with the mother divest himself of the custody of his child. *Johnson v. Terry,* 34 Conn. 259; *People v. Mercein, supra.* Nor can he deprive her of her rights by agreement. *Moore v. Christian,* 56 Miss. 408; *State v. Reuff,* 29 W. Va. 751. But where such contracts have been made, courts may, for the benefit of the child, refuse to set them aside. *Chapsky v. Wood,* 26 Kan. 650. In regard to the child "the court will not exchange a certainty for an uncertainty." *Drummond v. Ashton,* 8 W. N. C. (Pa.) 563; *Bryan v. Lyon,* 104 Ind. 227. In the case of illegitimate children the putative father has no right to custody as against the mother. *Pratt v. Nitz,* 48 Iowa 33; *People v. Kling,* 6 Barb. (N. Y.) 366.

INJUNCTION—AGREEMENT NOT TO OPPOSE.—NATIONAL PHONOGRAPH CO. V. SCHLEGEL, 117 FED. 624.—Complainant applied for a perpetual injunction and defendants signified in writing their consent to its issuance. The object of the transaction was to use the injunction to intimidate others in positions similar to that of the defendants. *Held,* that the writ should not issue.

In *American Co. v. Vail,* 15 Blatch. 315, apparently the only similar case on record, the injunction asked was granted, but with the specification that no judgment was passed on the merits of the controversy. The Supreme Court, in *Ford v. Teazie,* 8 How. 251, has ruled that a judgment in a suit at law where there is no real contest is a "nullity." The same principles apply still more strongly in the case of injunctions, which lie, not as of right, but in the discretion of the court; *Wormser v. Brown,* 149 N. Y. 163; *Story, Eq. Jur., 10th ed.,* 959a; and the use of which should be carefully guarded. *Atty.-Gen. v. Utica Ins. Co.,* 2 Johns. Ch. 370; *Story, Eq. Jur.,* 959b.

INJUNCTION—PICKETING.—FOSTER ET AL. V. RETAIL CLERKS' PROTECTIVE ASS'N. ET AL., 78 N. Y. SUPP. 860.—Defendants, sympathizers with a labor union by design and agreement, distributed cards asking union men to keep away from the store of the plaintiffs and sought by picketing the vicinity to

peacefully persuade the public from patronizing their store. *Held,* an injunction would not be granted restraining the defendants.

Questions of this sort frequently arise and the decisions are by no means uniform. Where one knowingly injures another he must show justification or privilege. Here public policy is the justification. 8 *Har. Law Rev.* 1. The recent decisions which separate picketing and peaceful persuasion from all circumstances of threat warrant the refusal to enjoin. *Allen v. Flood,* (1898) App. Cas. 1; Justice Holmes in *Vegelahn v. Guntner,* 167 Mass. 92.

MASTER AND SERVANT—FELLOW SERVANT.—ORMAN ET AL. V. SALVO, 117 FED. 223.—Workmen engaged in constructing a railroad grade were divided into day and night shifts. A member of the night shift was injured by a blast, of which no notice was given, while sleeping in a tent provided by the master. *Held,* that the fellow servant doctrine did not apply.

In *Washburn v. Nashville & C. R. Co.,* 40 Tenn. 638, the rule is well stated that one is not a fellow servant unless at the time of the injury he was acting in the service of the master. The following cases illustrate this principle; a deck hand not on duty, *Ry Co. v. Ross,* 112 U. S. 377; a section boss, killed while crossing tracks on way home from work, *Columbus & T. R. Co. v. O'Brien,* 4 Ohio Cir. Ct. 515; an employee of a factory, injured by negligence of co-employee in leaving street in front of factory in a defective and dangerous condition, *Baird v. Pettit,* 70 Pa. 477. *Contra,* railroad employee injured while on cars, but off duty, *Ry. Co. v. Ryan,* 82 Tex. 565; *Ry. Co. v. Welch,* 72 Tex. 298.

MINORS—NECESSARIES—COUNSEL FEES.—CRAFTS V. CARR, 53 ATL. 275 (R. I.).—An action for damages for indecent assault was successfully prosecuted by an attorney for a 17-year-old minor. After judgment, the minor attempted to enter into a disadvantageous compromise of the claim, but by the attorney's efforts the full amount was collected. *Held,* that the services of the attorney were necessaries.

There is no unanimity among the authorities as to what shall be the test to determine whether services rendered by an attorney to a minor are necessaries. A large class of cases hold that services rendered in relation to property are not necessaries. *Dillon v. Bowles,* 77 Mo. 603; 16 *Am. & Eng. Ency. Law* 275 (2nd ed.). Some authoritie adopt this rule excepting from it, however, services that are beneficial to the infant's estate. *Epperson v. Nugent,* 57 Miss. 45. Probably the best test, and the one sanctioned by the court in this case, is that no services shall be deemed necessaries unless indispensable to the personal relief, protection and support of the infant. *Munson v. Washband,* 31 Conn. 303; *Barker v. Hibbard,* 54 N. H. 339.

NEGLIGENCE—INJURIES TO CHILDREN—LIABILITY OF LANDOWNER.—PAOLINO V. MCKENDALL, 53 ATL. 268 (R. I.).—Where an occupant of premises on which children were accustomed to play, set a fire thereon, and a young child was attracted thereby and burned, the occupant, though he had taken no precautionary measures, was *held* not liable for the injuries.

This case involves an application of the rule in the so-called "turn-table cases," established by the Supreme Court in *Railroad Co. v. Stout,* 17 Wall. 657. It was there held that an owner of machinery or other property attractive to children, is liable for injuries happening to them, although wrongfully interfering with such property on his premises. The court